

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

APR 10 2023

BY
DEPUTY

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS BEAUMONT DIVISION**

Percy Twain Barber, and wife
Maria Barber

Claimants

v.

S.D.B. DEVELOPMENT, L.P., a
Texas Limited Partnership, President
Stephen D. Brown and,

THOMAS J. BURBANK, P.C.,
Attorney Thomas J. Burbank,

Respondents

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§
§
§
§

CIVIL ACTION NO. 1:21-CV-539

RESPONSE TO DEFENDANTS MOTION
FOR SUMMARY JUDGMENT

COMES NOW Percy Twain Barber and Maria Barber, Claimants in the above case, with their Response to Defendants' "Motion for Summary Judgment and Affidavit of THOMAS J. BURBANK", in Claimants' Separate Statement of Material Facts not Arguments, and as set forth below:

1. Our protection rely within the interpretation of **Executors of Cruden v. Neale, 2 N.C. 388, 1 Hayw. 388 (1796)**, an addition to **Regulation Z** while explains how mortgage broker have an obligation to deal with a consumer.
2. Claimants respectfully present, Defendants premature Motion for Summary Judgment is no more than an attempt to "railroad" Claimants. The U.S. Supreme Court has ruled Summary Judgment "...should be denied, or the hearing on the motion to be continued, if the nonmoving has not had the time to make full discovery." Celotex v 3 Catrett, 106 S.Ct, 2554, 477 U.S. 326 (1988)
3. Nevertheless, in an excess of caution, Claimants herein present their Response to Defendants Motion for Summary Judgment, Affidavit of THOMAS J. BURANK, all of which clearly demonstrate there are several material facts in dispute, including, but not limited to, Defendants Stephen D. Brown and Attorney Thomas J. Burbank to foreclose on the Barber's Private Property without validating the debt, violating Claimants' unalienable rights. As set forth in the Fifth Amendment, depriving them of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STANDARD REQUIRED FOR SUMMARY JUDGMENT

Regarding the Federal Rules of Civil Procedure Rule 56 (c) and Defendants Motion for Summary Judgment the U.S. Supreme Court has clearly stated:

"Credibility determinations, weighing of evidence, and drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether his ruling is on motion for summary judgment or for directed verdict; evidence of the nonmovant is to be believed and all justifiable inferences are to be drawn in his favor." Anderson v Liberty 24 Lobby, Inc. 106 S.Ct. 2505 (1986)

CLAIMANTS HAVE PRESENTED MATERIAL FACTS IN DISPUTE

Claimants' Separate Statement of Material Facts and Constructive Notice are within this document. Claimants have disputed various of Defendants asserted facts, and presented evidence that Defendant Thomas J. Burbank received the fax showing the payments for July and September on October 26, 2021. Claimants received a Transmission Verification Report that the fax was sent to Burbank's office fax number seven (7) days prior to the foreclosure of the Barber's Private property on November 2, 2021. (Document 1 Filed 10/28/21 Page 10 & 11 of 14 Pages). In the Affidavit Notice of Acceptance to Contract, Claimants asked the Defendants to validate the debt on October 6, 2021. (Document 24 Filed 01/25/22 Pages 4,5,6 & 7 of 26 Pages). Instead of validating the debt as required by the Fair Debt Collection Practices Act, debt collector Thomas J. Burbank proceeded with the foreclosure, therefore denying Claimants proper due process, **15 USC 1692g (a), 15 U.S. Code § 1692f, 15 U.S. Code § 1692e (4), 15 U.S. Code § 1692j. In His Own Letters, Defendant Thomas J. Burbank Stated That He is a Debt Collector using the Fair Debt Collection Practices Act on his documents to do business in the State of Texas.**

MEMORANDUM OF POINTS AND AUTHORITIES

1. Defendants stated in their Motion for Summary Judgment and Summary of Argument, that the Federal Court does not have subject matter jurisdiction. When applying for the lawsuit, Claimant Percy Barber checked Basic Jurisdiction for the Court since Claimants have Federal Questions. The **United States District for The Eastern District of Texas Beaumont Division Court** has jurisdiction pursuant to 28 U.S. Code § 1331, § 1343 and § 1367 because this case involves federal questions, civil rights claims under 42 U.S.C. § 1983, and pendant state claims. (Document 1-1 Filed 10/28/21 Page 1 of 2 Pages).
2. The Claimants were not in default on their mortgage obligation. Proof that payments were paid and accepted. (Document 1 Filed 10/28/21 Pages 10 & 11 of 14 Pages). On February 16, 2023, Claimants filed a **DUTY TO DISCLOSE**, attaching two more checks for August 10, 2021, and October 10, 2021, that were paid and accepted. As the court can see all checks were written in the proper chronological sequence, The Barbers have exercised the entire case with clean hands and good faith. (Document 72 Filed 02/16/23 Page 1 of 2 Pages) The Federal court website shows that Exhibit A is ***Restricted***

Case 1:21-cv-00539-MJT-CLS Document 1 Filed 10/28/21 Page 10 of 14 PageID #: 10

1081
7/10/2021
\$1,825.00
SDB Development, Inc.
Percy Barber

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1082
9/10/2021
\$1,825.00
SDB Development, Inc.
Percy Barber

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1083
7/10/2021
\$1,825.00
SDB Development, Inc.
Percy Barber

Case 1:21-cv-00539-MJT-CLS Document 1 Filed 10/28/21 Page 13 of 14 PageID #: 13

1084
9/10/2021
\$1,825.00
SDB Development, Inc.
Percy Barber

PERCY BARBER
MARIA BARBER
9015 MCLEAN ST
BEAUMONT, TX 77707-1220

1054
88-77720131
877713

8/10/2021 Date

Pay to the Order of SDB Development \$ 1,325.00
One Thousand Three Hundred Twenty Five 00/100 & 00/100

MobilOil
FARMER CREDIT UNION
Customer Branch
PO Box 1246
Beaumont, Texas 77707-2049

For Mortgage for 9015 McLean St By: fray T. Barber / M. Barber

⑆313177727⑆10100000112941⑆1054

>113111983< 20211112
CommunityBank of Texas, NA
Drawer# Trans#: 80087/0132
HIN: 798669120000553

113111983 80087 132 2021/11/12 15 52 30

S.D.B. DEVELOPMENT L.P.
21449667

PERCY BARBER
MARIA BARBER
9015 MCLEAN ST
BEAUMONT, TX 77707-1220

1063
88-77720131
877713

10/10/2021 Date

Pay to the Order of SDB Development \$ 1,325.00
One Thousand Three Hundred Twenty Five 00/100 & 00/100

MobilOil
FARMER CREDIT UNION
Customer Branch
PO Box 1246
Beaumont, Texas 77707-2049

For Mortgage for 9015 McLean St By: fray T. Barber / M. Barber

⑆313177727⑆10100000112941⑆1063

>113111983< 20211112
CommunityBank of Texas, NA
Drawer# Trans#: 80087/0132
HIN: 798669120000554

113111983 80087 132 2021/11/12 15 52 30

S.D.B. DEVELOPMENT L.P.
21449667

BOFD >113111983< 11/12/2021 seq 798669120000553

>113111983< 11/12/2021 seq 798669120000553
>114000093< 11/15/2021 seq 8500530855
>061000146< 11/15/2021 seq 8189695740
>061000146< 11/15/2021 seq 991002220

BOFD >113111983< 11/12/2021 seq 798669120000554

>113111983< 11/12/2021 seq 798669120000554
>114000093< 11/15/2021 seq 8500530856
>061000146< 11/15/2021 seq 8189695741
>061000146< 11/15/2021 seq 991002221

Exhibit A

Exhibit A

3. The Defendants stated that the Claimants never informed them about their violation of the Texas Property Code or the Fair Debt Collection Practices Act. This emission is denied because it has been documented on the record dated Filed on 01/25/22. (Document 24 Page 8, 9,10 &12 of 26 Pages). Faxed and Certified Mail on October 26, 2021.
4. Defendant Thomas J. Burbank claims that on September 17th, 2021, he mailed off a "NOTICE OF INTENT TO ACCELERATE", but the letter wasn't post-stamped until September 22nd, 2021. The ONLY correspondence from Defendants the Barber's received. (Document 1 Filed 10/28/21 Page 5, 6, 7, 8, & 9 of 14 Pages). Claimants had until October 25th, 2021, to dispute the validity of the described debt or any portion of it, but on October 12th, 2021, Notice of Intent To Accelerate- Notice Of Trustee's Sale- Posting For Foreclosure.
5. Defendant Thomas J. Burbank stated undisputed material facts, he claims to have sent the Letter "NOTICE OF INTENT TO ACCELERATE- NOTICE OF TRUSTEE'S SALE- POSTING FOR FORECLOSURE" using Certified Mail # 70160600000037965781 and NOTICE TO QUIT on January 10, 2022 the Defendants cannot show bona-fide proof with certified mail receipt according to the law for evidence of the correspondence being sent to the Claimants' address stated in this paragraph.

6. The Defendants cannot show bona-fide proof of the correspondence that was sent to the Claimants'. (Document 36-1 Filed 03/28/22 Page 7 of 18 Pages). While reviewing the defendant's claim, Claimants looked up the Certified Mail number Defendant stated to have used for mailing off the documents to Claimants **AND THE CERTIFIED MAIL NUMBER TURNED OUT TO BE FRAUDULENT.** 18 U.S.C SECTION 1341- Elements of Mail Fraud & 18 U.S. Code § 1342 - Fictitious name or address, Pereira v. United States, 347 U.S. 1 (1954) & Schmuck v. United States, 489 U.S. 705 (1989), 18 U.S. Code § 1341 - Frauds and swindles.
7. The only Notice of Trustee's Sale Claimants received was from another party named "Barron & Barron LLP" on Tuesday October 26th, 2021. (Document 1 Filed 10/28/21 Page 12, 13 & 14 of 14 Pages). Claimants never received the correspondence Defendants claimed to have sent. The Defendants cannot show bona-fide proof or a certified mail receipt of the correspondence being sent to the Claimants' address.
8. Pursuant to the Fair Debt Collection Practices Act 15 U.S. Code § 1692e (14), The use of any business, company, or organization name other than the **true name** of the debt collector's business, company, or organization. Is a violation of law.

FW: SOS file info

From: Sheryl Lockhart (slockhart@sos.texas.gov)
To: loyalpb@yahoo.com
Cc: Slockhart@sos.texas.gov
Date: Friday, January 20, 2022 at 00:30 AM CST

From: Corporations Information <CorpInfo@sos.texas.gov>
Sent: Friday, January 28, 2022 8:25 AM
To: 'loyalpb@gmail.com' <loyalpb@gmail.com>
Cc: Sheryl Lockhart <Slockhart@sos.texas.gov>
Subject: SOS file info
Sensitivity: Personal

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY
Filing Number: 92276902 Entity Type: Domestic Professional Corporation
Original Date of Filing: February 7, 1997 Entity Status: In existence
Formation Date: N/A
Tax ID: 30110337175 FEIN:
Duration: Perpetual
Name: THOMAS J. BURBANK, P.C.
Address: 505 WEST LUCAS
BEAUMONT, TX 77706 USA

REGISTERED AGENT	FILED HISTORY	NAMES	MANAGEMENT	ASSUMED NAMES	ASSOCIATED ENTITIES	INITIAL ADDRESS
Name Thomas J Burbank		Address 2360 LAUREL ST BEAUMONT, TX 77702 USA				Inactive Date

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY
Filing Number: 92276902 Entity Type: Domestic Professional Corporation
Original Date of Filing: February 7, 1997 Entity Status: In existence
Formation Date: N/A
Tax ID: 30110337175 FEIN:
Duration: Perpetual
Name: THOMAS J. BURBANK, P.C.
Address: 505 WEST LUCAS
BEAUMONT, TX 77706 USA

REGISTERED AGENT	FILED HISTORY	NAMES	MANAGEMENT	ASSUMED NAMES	ASSOCIATED ENTITIES	INITIAL ADDRESS
Last Update March 24, 2018	Name THOMAS J BURBANK	Title PRESIDENT		Address 505 WEST LUCAS BEAUMONT, TX 77706 USA		
March 24, 2018	THOMAS J BURBANK	DIRECTOR		505 WEST LUCAS BEAUMONT, TX 77706 USA		

All the very best to you and your family, through this uncertain and difficult time. Happy New Year.

Respectfully,

Sheryl L.
Customer Service Representative
Business and Public Filings
Office of the Texas Secretary of State
Phone: (512) 463-5555

You may now check status of your documents here: <https://webservices.sos.state.tx.us/filing-status/status.aspx>

*Please feel free to email my manager with any feedback you may have at: vtorres@sos.texas.gov.

PLEASE NOTE:
NOTE: Due to a high volume of filing activity and an increased demand for business services, the Secretary of State is experiencing delays in processing at this time. Non-expedited documents sent by mail or by fax are being processed within 40+ business days. Expedited documents are being processed within 6-7 business days. Electronic documents submitted through SOSDirect and SOSUpload are being processed within 3-5 business days. Thank you for your patience.

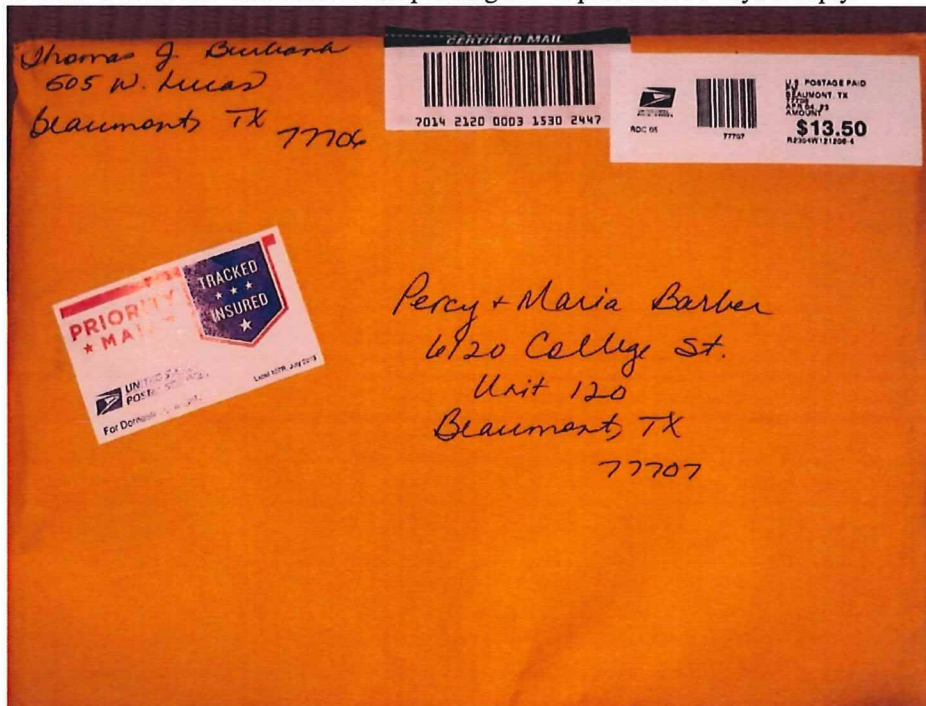
Please send future e-mail requests to corpinfo@sos.texas.gov

This is our general information e-mail address answered by multiple operators of which I am one. If I am out unexpectedly, the reply to your request may be delayed.

This email provides general answers to the questions raised, is not intended as legal advice. Please contact your attorney for legal advice specific to your circumstances.

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9. The fact that there is a controversy (exceeding the amount of 20,000.00 USD) gives jurisdiction to the UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICTS OF TEXAS BEAUMONT DIVISION since October 28th, 2021, under the Seventh Amendment of the Constitution for the United States America for trial by jury and not for an administrative proceeding such as, a summary proceeding for eviction. THE JUSTICE'S COURT OF PRECINT 1 PLACE 1 is a judicial forum to hear and decide civil cases involving claims in the amounts of \$20,000.00 or less. and the property value was estimated at \$182,800.00 meaning the case "Notice of Eviction" filed by the Defendants was insufficient and the PRECINCT 1 PLACE 1 COURT **could not** make a proper determination nor judgement. On October 4th, 2022 after the Eviction **THE PROPERTY WAS SOLD for \$215,000.00 USD Filed and Recorded in the County Clerk office # 2022036220.** Equity was stolen and selling the property during an active case in Federal Court is Property and Mortgage Title Theft/Fraud.
10. Claimant Percy's mother as a result of the actions of THE JUSTICE'S COURT OF PRECINT 1 PLACE 1, succumbed and lost her life to the stress and trauma, and Claimants do believe her death was 100% preventable. There is nothing on the record that documents that Claimants were given a due process hearing or even the right to a trial by jury and/or a right to a fair and impartial hearing before a fair and impartial jurist! What is on the record however, is the aforementioned information, and Claimants seek redress as it is the Claimants right under the Constitution of the great State of Texas and of the United States of America within United States District for The Eastern District of Texas Beaumont Division.
11. Defendants e-filed a Motion for Summary Judgment and Affidavit of THOMAS J. BURBANK correspondence to federal court on March 22, 2023. Claimants received the Defendants' documents on April 07, 2023, but it's postdated on April 04, 2023. Defendants' frivolous actions against the Claimants is to make it seem like Claimants are responding late or past their 14 days to reply.



12. The Defendants have avoided the Honorable Judge's order to respond to Claimants, pursuant to Fair Debt Collection Practices Act 15 U.S. Code § 1692f - Unfair practices, (6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if (A) there is no present right to possession of the property claimed as collateral through an enforceable security interest; (B) there is no present intention to take possession of the property. Defendants are yet to respond it's been over 90 days and counting.

"[I]f the law claimed to have been violated was clearly established, the qualified immunity defense ordinarily fails, 'since a reasonably competent public official should know the law governing his conduct.'"
"Bearden v. Lemon, 475 F.3d 926, 929 (2007)"

SUMMARY

As a matter of law denying due process and proper justice, to Claimants, the Barbers, by foreclosing on their Private Property on November 02, 2021, Defendants violated Claimants' Fifth Amendment rights and the Fair Debt Collection Practices Act. Defendants have otherwise been deceptive and failed to comply with the provisions of the FDCPA, specified in their documents.

CONCLUSION

Claimants' requests that the court make a finding based upon facts NOT arguments and circumstances available to the court at the time of Judgment. Declaring that the practices complained of herein are unlawful and violate the aforementioned bodies of law; Claimants alleges that any violations by Stephen D. Brown of S.D.B. DEVELOPMENT L.P. and Thomas J. Burbank of THOMAS J. BURBANK, P.C. were knowing and intentional, and that Defendants did not maintain procedures reasonably adapted to avoid any such violation.

This case is about fighting for and preserving natural and human rights already set forth in our federal and state constitution. This court has a solemn responsibility and duty to protect the U.S. Constitution and the rights of the people guaranteed therein. As the United States Supreme Court stated in ex prate *Young, 209 US 123 (1908)*

JURY DEMAND

PLEASE TAKE NOTICE that Claimants requests a trial by jury by peers only on all issues so triable, including without limitation the quantum of damages.

WHEREFORE, PREMISES CONSIDERED, Claimants request the court to **DENY** Defendants Motion for Summary Judgment, and to grant such other relief the Court deems proper according to the law of the land.

I declare under penalty of perjury under the laws of the State of Texas that the foregoing is true and correct.

Respectfully presented this 10th day of April 2023.

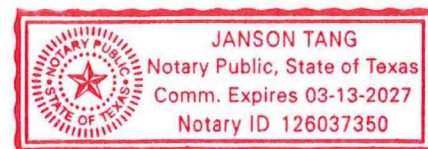
Prepared and presented by: _____

Percy Twain Barber, Sui Juris, All Rights Reserved.

Sworn to and subscribed before me on this day 10 of April, 2023, by Percy Twain Barber, whose name is signed on this instrument, and has acknowledged before me that he executed the same as his freewill act and deed.

Notary Public Sitting in, and for, The State of Texas

Commission expires: 3-13-2027



SEAL

CERTIFICATE OF SERVICE

We hereby certify that a true and correct copy of the foregoing Response to Defendants Motion for Summary Judgment was served upon the following via Hand Delivery and Certified Mail on April 10th, 2023.

UNITED STATES DISTRICT COURT
300 Willow Street, Suite 104
Beaumont, TX 77701-2217

THOMAS J. BURBANK, P.C.
Attorney Thomas J. Burbank,
State Bar No. 03355340
505 West Lucas Drive
Beaumont, Texas 77706
Certified Mail: 7020 0640 0001 3776 5235

Dated: April 10, 2023
Percy Barber and Maria Barber
c/o 6120 College Street Unit 120
Beaumont, Texas [77707]